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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JADE TSAI,

Plaintiff,

vs.

CELLCO PARTNERSHIP, DBA
VERIZON WIRELESS, and
DOES 1-10,

Defendants.

CASE NO.

**COMPLAINT FOR VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. § 227, *ET SEQ.*;
INVASION OF PRIVACY;
FEDERAL FAIR DEBT
COLLECTION PRACTICES ACT;
ROSENTHAL FAIR DEBT
COLLECTION PRACTICES ACT**

DEMAND: \$50,000.00

JURY TRIAL DEMANDED

Plaintiff Jade Tsai, ("Plaintiff") alleges the following upon information
and belief and personal knowledge:

NATURE OF THE CASE

1
2 1. Plaintiff brings this action seeking damages and any other
3 available legal or equitable remedies resulting from the illegal actions of
4 Cellco Partnership. (“Defendant”) in negligently, knowingly, willfully, and/or
5 intentionally causing an automatic dialer to dial Plaintiff’s cellular phone
6 line and negligently, knowingly, willfully, and/or intentionally using a pre-
7 recorded voice message in the inception of the same phone calls in violation
8 of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, (“TCPA”),
9 thereby violating Plaintiff’s federal and state statutory rights, and invading
10 her right to privacy, without her express written, implied, and/or oral
11 consent.

JURISDICTION

12
13 2. This Court has federal question and supplemental jurisdiction
14 because this case arises out of violations of the TCPA upon Plaintiff.

15 3. Venue is proper because Plaintiff currently, and at the time of
16 the violation, resides and was present in this judicial district, in which
17 Defendant Cellco Partnership, also conducts business.

PARTIES

18
19 4. Plaintiff Jade Tsai is a natural person residing in Alameda
20 County in the State of California and is a “person” under the meaning of 47
21 U.S.C. § 153(10).

22 5. Defendant Cellco Partnership, a Delaware corporation, is a
23 nationwide communications company that provides cellular phone services.
24 Defendant conducts business as and is known as Verizon Wireless.

25 6. Plaintiff is unaware of the true names and capacities of the
26 Defendants sued herein as DOES 1-10, who are currently unknown to
27 Plaintiff, who therefore sues such Defendants by fictitious names.
28

1 7. All of the above named Defendants, and their subsidiaries,
2 agents, officers, directors, and managing agents, are legally responsible for
3 the allegations and damages alleged herein. Plaintiff will seek leave to
4 amend the Complaint to reflect the true names and capacities of the DOE
5 defendants when such identities become known.

6 **FACTUAL ALLEGATIONS**

7 8. Between April and July of 2014, Defendants negligently,
8 knowingly, willfully, and/or intentionally caused an autodialer to dial
9 Plaintiff's cellular phone number ending in digits 6764 and negligently,
10 knowingly, willfully, and/or intentionally used a pre-recorded voice message
11 in the inception of the same phone calls.

12 9. Defendants caused the autodialer to dial Plaintiff's cellular
13 phone using a prerecorded voice message approximately 20 times between
14 April and July of 2014, including but not limited to the dates of May 16,
15 2014, May 22, 2014, May 24, 2014, July 15, 2014, July 16, 2014, and July 26,
16 2014, and would call multiples times on certain days and multiple times on
17 certain weeks.

18 10. Defendants used several different telephone numbers to autodial
19 and call Plaintiff's cellular phone, including but not limited to (510) 695-
20 2555, (510) 962-4800, and (206) 602-1543.

21 11. The phone numbers described in paragraph 10 are either within
22 Defendants control, and or used to conduct autodialed calls with prerecorded
23 voice messages with Defendants' knowledge or constructive knowledge.

24 12. Plaintiff's cellular phone used a "pre-paid" plan with limited
25 minutes and calls, and consequently, each time Defendants called Plaintiff,
26 Defendants invaded Plaintiff's privacy, caused undue annoyance and stress,
27 and wasted the use of a cellular phone service at Plaintiff's monetary
28

1 expense, despite the fact that Plaintiff informed Defendants that Plaintiff
2 was not the individual Defendants were trying to contact.

3 14. Plaintiff never, either implicitly or expressly, in writing or orally,
4 consented to be contacted on her cellular phone by an autodialer or through
5 the use of a pre-recorded voice message.

6 15. The pre-recorded message stated that the calling company was
7 Verizon Wireless and identified a consumer with a different name than
8 Plaintiff, and appeared to be an attempt to contact someone other than
9 Plaintiff in an attempt to collect a debt.

10 16. Plaintiff specifically notified Defendants that Defendants were
11 attempting to contact the wrong person, but continued to receive calls after
12 informing Defendants.

13 17. Defendants negligently, knowingly and intentionally failed to
14 create a legitimate “opt-out” system or a system for Defendants to track that
15 they were calling the wrong party.

16 18. Defendants negligently, knowingly and intentionally continue to
17 call consumers even when Defendants should or do know they are contacting
18 the wrong person.

19 19. The autodialed phone calls and pre-recorded voice messages
20 were caused to occur by Defendants for Defendants’ financial gain,
21 telemarketing goals, membership growth, and were entirely commercial in
22 nature.

23 20. Upon information and belief, Defendants maintain, or have the
24 ability to maintain, some form of record of which numbers are incorrect and
25 result in calls to the wrong person.

26 21. Upon information and belief, Defendants negligently,
27 knowingly, willfully, and/or intentionally ignored the records of when they
28 called the incorrect parties.

22. Plaintiff does not have a business relationship with Defendants under the meaning of 47 U.S.C. §§ 227(a)(2); 227(a)(4) that excuses Defendants from the above-described violations of the TCPA and never agreed to be contacted by Defendants with an autodialer or pre-recorded voice message.

23. All calls made by Defendants were made through the use of an “automatic telephone dialing system” as defined by 47 U.S.C. § 227(a)(1) and in violation of 47 U.S.C. § 227(b)(1)(A).

24. All pre-recorded voice messages were “artificial or prerecorded voice[s]” under the meaning of 47 U.S.C. § 227(b)(1)(A).

FIRST CAUSE OF ACTION

Violations of the Telephone Consumer Protection Act

47 U.S.C. § 227 *et seq.*

25. Plaintiff repeats and incorporates by reference into this cause of action the allegations set for in paragraphs 1-24.

26. The foregoing acts and omissions of Defendants constitute numerous and multiple violations of the TCPA, including, but not limited to, each and every one of the provisions of 47 U.S.C. § 227 *et seq.* cited herein.

27. The foregoing acts and omissions of Defendants violate 47 U.S.C. § 227(b), providing:

“Restrictions on use of automated telephone equipment

(1) Prohibitions. It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

...

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile

1 radio service, or other radio common carrier service,
2 or any service for which the called party is charged
3 for the call;

4 (B) to initiate any telephone call to any residential
5 telephone line using an artificial or prerecorded voice to
6 deliver a message without the prior express consent of the
7 called party, unless the call is initiated for emergency
8 purposes or is exempted by rule or order by the
9 Commission under paragraph (2)(B);
10 (47 U.S.C.A. § 227(b).)

11 28. As a result of Defendants' violations, Plaintiff is entitled to an
12 award of either \$500.00 or \$1,500.00 in statutory damages for each and
13 every violation, pursuant to 47 U.S.C. § 227(b)(3).

14 **SECOND CAUSE OF ACTION**

15 **Invasion of Privacy – California Constitution Sec. 1, Art. 1**

16 29. Plaintiff repeats and incorporates by reference into this cause of
17 action the allegations set for in paragraphs 1-28.

18 30. Defendants conduct violated Article 1, Section 1 of the California
19 Constitution providing that "[a]ll people are by nature free and independent
20 and have inalienable rights. Among these are enjoying and defending life
21 and liberty, acquiring, possessing, and protecting property, and pursuing
22 and obtaining safety, happiness, and privacy."

23 31. Specifically, the TCPA creates a statutory privacy interest in the
24 right to not be autodialed or contacted with prerecorded voice messages on a
25 consumer's private cellular phone.

26 **THIRD CAUSE OF ACTION**

27 **Violations of the Federal Fair Debt Collection Practices Act**

28 **15 USC § 1692d, et seq.**

32. Plaintiff repeats and incorporates by reference into this cause of
action the allegations set for in paragraphs 1-31.

1 33. Defendants conduct violated the FDCPA in numerous ways,
2 including but not limited to section 15 USC 1692d(5)-(6), 15 USC 1692e, and
3 15 USC 1692f.

4 34. Defendants called Plaintiff multiple times on the same day, and
5 continually, despite receiving express notice from Plaintiff, who picked up
6 the phone and informed Defendants that they were calling the wrong person
7 and attempting to collect a debt that Plaintiff did not owe.

8 **FOURTH CAUSE OF ACTION**

9 **Violations of the Rosenthal Fair Debt Collection Practices Act**

10 **CAL. CIV. CODE § 1788, et seq.**

11 35. Plaintiff repeats and incorporates by reference into this cause of
12 action the allegations set for in paragraphs 1-34.

13 36. Defendants conduct violated the Rosenthal Act in the same
14 manner that the Federal Fair Debt Collection Practices Act was violated and
15 is therefore liable under each statute for each violation.

16 **PRAYER FOR RELIEF**

17 37. WHEREFORE, Plaintiff requests judgment against Defendants
18 and for the following:

19 **ALL CAUSES OF ACTION**

- 20 I. As a result of Defendants' violations of 47 U.S.C. § 227, *et*
21 *seq.*, and pursuant to 47 U.S.C. § 227(b)(3), Plaintiff is
22 entitled to and request \$500 in statutory damages per
23 violation, or \$1500 in statutory damages per violation
24 within the discretion of the Court if the violations were at
25 least willful or knowingly committed;
- 26 II. For Defendants to be enjoined from engaging in further
27 violations of 47 U.S.C. § 227, *et seq.*;
- 28 III. For actual damages according to proof;

- 1 IV. For all applicable statutory and actual damages under the
2 Federal Fair Debt Collection Practices Act;
3 V. For all applicable statutory and actual damages under the
4 Rosenthal Fair Debt Collection Practices Act;
5 VI. For all applicable statutory and actual damages for
6 Defendants violations of Plaintiff's privacy rights;
7 VII. For costs;
8 VIII. For attorney's fees as available by law or equity;
9 IX. And for any other relief that the Court deems just.

10
11 September 16, 2014

By */s/Nathaniel Clark*
Nathaniel Clark, Esq.
Seaton Tsai, Esq.
Attorney for Plaintiff Jade Tsai